PHILIPPINES

TRADE SUMMARY

In 2000, the U.S. trade deficit with the Philippines was nearly $5.2 billion, essentially equal to the 1999 deficit. U.S. merchandise exports to the Philippines totaled $8.8 billion, an increase of $1.6 billion (21.6 percent) from the level of U.S. exports to the Philippines in 1999. The Philippines was the United States' 19th largest export market in 2000. U.S. imports from the Philippines totaled $13.9 billion in 2000, a increase of $1.6 billion (12.6 percent) from the level of imports in 1999. U.S. exports of private commercial services (i.e., excluding military and government) to Philippines were $1.4 billion in 1999, and U.S. imports were $1.2 billion. Sales of services in Philippines by majority U.S.-owned affiliates were $589 million in 1998, while sales of services in the United States by majority Philippine-owned firms were $8 million.

The stock of U.S. foreign direct investment (FDI) in the Philippines at the end of 1999 was $3.8 billion, a decrease of 3.5 percent from the level a year earlier. U.S. FDI in the Philippines is concentrated largely in the manufacturing, energy and financial sectors.

IMPORT POLICIES

Tariffs

Imported manufactured items that are not locally produced generally face low tariffs, while imports that compete with locally produced goods face tariffs of up to 30 percent. Under the Philippine Government's comprehensive tariff reform program, set out in Executive Orders (E.O.) 264 and 288, applied MFN tariff rates for all items except sensitive agricultural products are to be gradually reduced to the following target rates: three percent for raw materials by January 2003; 10 percent for finished products by January 2003; and a uniform five percent tariff rate for all products by January 2004.

While the Philippines has indicated that it remains committed to these reduced tariff levels, in response to requests from import-sensitive industries, the Ramos Government issued E.O. 465 and E.O. 486, which took effect January 21 and July 7, 1998, respectively, implemented a more gradual rate reduction schedule for many items, established higher rates for some tariff headings (garments, rubber, steel, textiles, certain petrochemicals, forest product industries, ammunition, and unfinished automotive vehicles imported in kit form), and set lower rates on other headings, including some agricultural products. For other tariff lines, E.O. 465 and E.O. 486 extended 1997 rates into 1998, or postponed until 1999/2000 reductions in duties originally scheduled for 1998.

In September 1998, the Estrada Administration agreed to consider requests by import-sensitive manufacturers for selected tariff increases, setting aside a precedent of waiting at least 12 months following changes to rates before initiating any review of those new rates. The result, E.O. 63, signed in January 1999, raised tariff rates on 714 tariff lines. The main changes of interest to U.S. companies included increases in the MFN applied tariff rates on yarns, threads, fabric, apparel, and kraft liner paper. Higher rates on these products were originally imposed in January 1998 by E.O. 465 for one year only; however, E.O. 63 extended these rates through 1999. Rates on these items returned to 1997 levels on January 1, 2000.

E.O. 334, issued on January 3, 2001, during the final days of the Estrada Administration, set out tariff rates for 2001 to 2004. Generally, the E.O. maintained 2000 tariffs for 2001 and proposed gradual rate reductions in 2002 and 2003 to meet the goal established under the Ramos Administration for a uniform five percent tariff rate for all products by January 2004. Exceptions to this plan include some raw materials that would face a three percent rate for 2004 as well as finished automobiles and some agricultural goods.

Imports of finished automobiles (completely built-up units) are subject to the highest duty rate applied to nonagricultural products, as an incentive to promote local assembly under the Philippines' Motor Vehicle Development Program. The rate was reduced from 40 to 30 percent on January 1, 2000. E.O. 465, signed in 1998, increased tariffs on completely knocked down automotive vehicle imports from seven percent in 1998 to 10 percent in 1999 and 2000. Under E.O. 334, tariff rates for finished automobiles will remain at 30 percent until 2003 and rates for completely knocked down vehicles will remain at 10 percent. In 2004, the rate for both goods will drop to five percent. Executive Order No. 314, effective November 8, 2000, mandated a three-month suspension of a three percent import tariff on crude oil and most refined petroleum products. The government intended to soften the impact of successive petroleum price increases on the prices of basic commodities and services. On February 8, 2000, the three percent tariff was reimposed.

The Safeguard Measures Act (Republic Act 8800), effective August 10, 2000, provided for general and special safeguards (for agricultural products) intended to protect domestic industries from import surges that could cause injury, or threat of injury. As a general safeguard, the Commissioner of Customs is authorized to raise tariffs to a level sufficient to prevent injury to the domestic industry. The Commissioner may also apply quantitative restrictions, but only to agricultural products. Under the special safeguard measure, an additional special safeguard duty may be imposed on an agricultural product, if its cumulative import volume in a given year exceeds its trigger volume, or if the CIF import price is less than its trigger price. However, the additional duty shall not apply to agricultural imports covered by minimum access volume (MAV) commitments. In the application of any safeguard measure, the obligation of existing supply contracts shall not be impaired or disadvantaged. To date, the provisions of this Act have not been applied to any product.

Agriculture Tariffs and Import Licensing

The Philippines maintains high tariff rates on sensitive agricultural products, including certain grains, livestock and meat products, sugar, certain vegetables, and coffee. Examples include feed grains, particularly corn (at an in-quota rate of 35 percent, 65 percent out-of-quota rate since July 1, 1999), sorghum (from 15 percent since January 1, 1999 to 10 percent beginning January 1, 2000) potatoes (in-quota rate of 45 percent, 60 percent out-of-quota rate since July 1, 1999), and fresh and chilled beef (from 20 percent since January 1, 1999 to 10 percent starting January 1, 2000). E.O. 334 maintained 2000 tariffs for 2001 for all agricultural goods, but would cut tariffs for many goods beginning in 2002. For example, the tariff rates (in and out of quota) for corn, cabbage, and coffee would be cut to 30 percent by 2004, while other less-sensitive goods would see their tariffs cut to five percent.

Fifteen tariff lines of agricultural commodities (at the 4-digit HS level) are subject to minimum access volume (MAV) tariff-rate quotas (TRQs). Products covered by these TRQs include live animals, fresh, chilled and frozen pork, poultry meat, goat meat, potatoes, coffee, corn, and sugar. E.O. 334 proposed equalizing in and out of quota tariff rates for all goods by 2004, but would not eliminate the TRQ mechanism. Administrative Order (A.O.) 9 of 1996, as amended by A.O. 8 of 1997 and A.O. 1 of 1998, established the rules for implementing these TRQs and allocating import licenses. The United States had been concerned that the TRQs for pork and poultry meat were administered in a manner that allocated a vast majority of import licenses to domestic producers who had no interest in importing. Following intensive consultations, the Governments of the United States and the Philippines concluded a Memorandum of Understanding (MOU) in February 1998 that resolved the United States' primary concerns over the Philippine TRQ system. An examination of the distribution of licenses in 1999 revealed that implementation of the reforms embodied in the MOU are gradually shifting import licenses from licensees not utilizing their licenses to active importers. Operation of the Philippines' TRQ system and the allocation and distribution of import licenses continues to be closely monitored by the United States.

Section 61 of the Philippine Fisheries Code, Republic Act (R.A.) 8550 permits importation of fresh, chilled, or frozen fish and fish products only when certified as necessary by the Secretary of Agriculture and upon issuance of an import permit by the Department of Agriculture. Fisheries Administrative Order (FAO) 195, Series of 1999, issued by the Department of Agriculture on September 20, 1999, implements Section 61. One of the criteria the secretary is mandated to consider in determining whether to approve importation is whether "there is serious injury or threat of injury to domestic industry that produces like or directly competitive products. "

Excise Tax on Distilled Spirits

Current Philippine law (Sections 141-143 of R.A. 8424 and Revenue Regulation 17-99) discriminates against many imported distilled spirits by subjecting them to a higher excise tax than applied to many common domestic spirits. Distilled spirits produced from indigenous materials (such as coconut palm, cane, and certain root crops) are subject to a specific tax of 8.96 pesos per proof liter. Distilled spirits produced from other raw materials (which would apply to most imports) are subject to a specific tax ranging from 84 pesos to 336 pesos per proof liter (depending on net retail price per 750 ml bottle). Still wines with an alcohol content of 14 percent or less by volume are assessed an excise tax of 13.44 pesos per liter, while still wines with an alcohol content greater than 14 percent but less than 25 percent alcohol content by volume are charged an excise tax of 26.88 pesos per liter. Fortified wines (containing greater than 25 percent alcohol content) are taxed as distilled spirits. Depending on the net retail price per bottle, an excise tax of 112 pesos or 336 pesos per liter is assessed on sparkling wines.

Excise Tax on Automotive Vehicles

Excise Tax on Automotive Vehicles Excise Tax on Automotive Vehicles

The excise tax for automotive vehicles is based on engine displacement, as opposed to vehicle value. This system imposes a competitive disadvantage on imported vehicles with larger engine displacement, including many U.S. exports. Current tax rates for motor vehicles with gasoline engines are: 15 percent for engines up to 1600 cubic centimeters (cc); 35 percent for those between 1601-2000cc; 50 percent for those between 2001-2700cc; and 100 percent for those 2701cc and above. For motor vehicles with diesel engines, excise rates are 15 percent for engines of up to 1800cc; 35 percent for those 1801-2300cc; 50 percent for those 2301-3000cc; and 100 percent for those 3001cc and above. Large utility vehicles (seating for ten or more) are exempt from this excise tax.

Quantitative Restrictions

The National Food Authority administers quantitative restrictions on rice imports. The minimum access volume (quota) for rice was 119,460 metric tons for 2000 and 134,396 metric tons for 2001. In 2001, the country is expected to import considerably more rice, due to harvest shortfalls and population growth (2.0 percent annual growth rate). The Department of Agriculture, on a trial basis, allowed the private sector to import a small volume of premium rice in early 1999. The United States continues to urge the Philippines to consider eliminating the quantitative restriction on rice in the context of the mandated World Trade Organization (WTO) agriculture negotiations.

Other Import Restrictions

Other Import Restrictions Other Import Restrictions

The Philippines maintains import restrictions on a range of products. Imports of used automotive vehicles remain subject to government review and approval. Effective April 15, 1999, the National Telecommunications Commission (NTC) requires cellular telephone service providers or authorized equipment dealers to obtain an import certification prior to importation of handsets for satellite-based cellular phones.

Philippine regulations generally require that any firm importing coal also purchase locally produced coal. While importers in the past were required to buy one unit of local coal for every unit of imported coal, the Department of Energy sometimes provides some flexibility to importers.

Customs Barriers

Customs Barriers Customs Barriers

On March 31, 2000, the Philippine Government ended a preshipment inspection services contract with Societe Generale de Surveillance (SGS). Effective April 1, 2000, all importers or their agents were required to file import entries with the Bureau of Customs (BOC), which processes these entries through its Automated Customs Operating System (ACOS). ACOS uses a computer system to classify shipments as low-risk (green lane), moderate risk (yellow lane) or high risk (red lane). Shipments channeled through the yellow lane require a documentary review, while red lane shipments require physical inspection at the port. Green lane shipments are not subject to any documentary or inspection requirements. The BOC on May 10, 2001 added a "super green lane" (SGL), promising qualified importers immediate, no-questions-asked clearance of goods, other than goods subject to import licenses and other controls. Cleared goods may be subject to random-post-entry inspections, but only at the importers' premises. In addition to duties and taxes, the BOC is authorized to charge a P2,500 ($55) fee, on a per-importation basis, for goods cleared through the SGL.

As a policy matter, the United States has repeatedly expressed concerns that the Philippine Government continue to improve administration of its customs regime and minimize certain actions of import harassment which, in many cases, have had the effect of creating trade impediments. Some reported abuses include arbitrary and unjustified increases or "uplifts" of the invoice value of imports, often on the basis of inappropriate or questionable information. There are periodic reports of other procedural irregularities, including requests by customs officials for the payment of unrecorded "facilitation" fees. The U.S. Government has repeatedly complained to the Philippine government on behalf of a U.S. exporter of certain cast-iron hubless pipe to ensure continued market access for this product. The U.S. Government is also troubled by a Bureau of Customs decision conditioned the approval of a U.S. automobile manufacturer's licenses to operate a private bonded warehouse on investment in manufacturing facilities.

The appeals process for considering grievances by importers can be time consuming. Importers who pursue an appeal must first pay duties on the uplifted valuation to obtain release of the shipment in question. Otherwise, the shipment is impounded pending the outcome of the appeal, with storage costs to be borne by the exporter or importer. A law passed on February 8, 2000, included provisions which would overhaul the appeals process, but until implementing rules and regulations are published the current system will remain in place.

The Philippines was obligated to implement the WTO Agreement on method of Customs Valuation on January 1, 2000. Legislation enacted February 8, 2001, is intended to make the valuation methodology used by the Bureau of Customs consistent with the WTO Agreement on Customs Valuation, but the legislation has not yet been implemented. The U.S. Government will closely monitor implementation of the new law.

In valuation and other areas, a 1997 memorandum of understanding between the Bureau of Customs and two Philippine industry associations creates formal channels for local private industry, including firms which produce goods that compete with imports, to influence valuation and other customs clearance procedures. Regulations issued in October 1998 further institutionalized the ability of local firms to seek upward adjustments in customs valuation of imported products.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Industrial Goods

Local inspection for standards compliance is required for 75 products subject to mandatory Philippine national standards, including cosmetics, medical equipment, lighting fixtures, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. For goods not subject to mandatory standards, U.S. manufacturers' self-certification of conformance is accepted. Labeling is mandatory for textile fabrics, ready-made garments, household and institutional linens, and garment accessories. Mislabeling, misrepresentation, or misbranding may subject the entire shipment to seizure and disposal. The "Generic Act" of 1988 aims to promote the use of generic drugs by requiring that the generic name of a particular pharmaceutical appear above its brand name on all packaging.

Agricultural Goods

The Philippine Department of Agriculture has established plant health regulations, which allow the import of U.S. apples, grapes, oranges, potatoes, onions, and garlic, provided these products do not originate from Florida or Texas. A protocol has been approved to allow the importation of Florida grapefruit, oranges and tangerines into the Philippines. However, fresh fruit imports from Texas are still currently prohibited due to phytosanitary reasons, i.e. the presence of fruit flies. Similar protocols are being negotiated for a range of other fruits and vegetables, including cherries, broccoli, lettuce, and cauliflower.

The Philippine Government's zero tolerance policy for methanol in wine products has posed a concern for exporting alcohol industries. This policy requires that a manufacturer's report on the manufacturing process be submitted to the Philippine Bureau of Food and Drug (BFAD) for evaluation.

GOVERNMENT PROCUREMENT

GOVERNMENT PROCUREMENT GOVERNMENT PROCUREMENT

The Philippines is not a signatory of the WTO Government Procurement Agreement (GPA). Contracts for government procurement are awarded by competitive tender. Preferential treatment of local suppliers is practiced in government purchases of pharmaceuticals, rice, corn, and iron/steel materials for use in government projects, and in locally-funded government consulting requirements. Contractors for infrastructure projects that require a public utility franchise (i.e., water and power distribution, telecommunications, and transport systems) must be at least 60 percent Filipino-owned. For other major contracts (such as Build-Operate-Transfer projects) not involving a public utility franchise, a foreign contractor must be duly accredited by its government to undertake construction work.

Executive Order 120, dated August 19, 1993, mandates a countertrade requirement for procurements by government agencies and government-owned or controlled corporations that entail the payment of at least U.S. $1 million in foreign currency. Implementing regulations issued by the Department of Trade and Industry set the level of countertrade obligations of the foreign supplier at a minimum of 50 percent of the import price, and provide for penalties for non-performance of countertrade obligations. The implementing agency for countertrade transactions is the Philippine International Trading Corporation.

Executive Order 262, dated July 2000, shifted emphasis from bidder's pre-qualification to eligibility check and strengthened post-qualification by changing the criterion for award from lowest evaluated responsive bid to lowest calculated responsive bid. The bidder's available budget serves as the ceiling in evaluating bid price. The Bid and Award Committee (which replaces the Prequalification, Bid and Award Committee), will determine the eligibility of prospective bidders, and adopt procurement procedures that utilize information technology.

EXPORT SUBSIDIES

Enterprises and exporters engaged in activities under the Government's "Investment Priorities Plan" may register with the Board of Investments (BOI) for fiscal incentives, including four to six year income tax holidays; a tax deduction equivalent to 50 percent of the wages of direct-hire workers; and tax and duty exemptions for the importation of breeding stocks and genetic materials. BOI-registered firms that locate in less-developed areas may be eligible to claim a tax deduction of up to 100 percent of outlays for infrastructure works and 100 percent of incremental labor expenses. Firms in government-administered export processing zones, free trade zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA) enjoy basically these same incentives, plus tax and duty-free importation of capital equipment and raw materials, and exemption from customs inspection. In lieu of national and local taxes, PEZA-registered firms are subject to a five percent tax on gross income. Firms that earn at least 50 percent of their income from exports may register with BOI or PEZA for certain tax credits under the Export Development Act, including a tax credit on incremental annual export revenue. Legislation was introduced in 2000, but did not pass, to restore a tax credit for imports of raw material or components not readily available locally, which expired on December 31, 1999.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

INTELLECTUAL PROPERTY PROTECTION INTELLECTUAL PROPERTY PROTECTION

Significant problems remain in ensuring the consistent and effective protection of intellectual property rights (IPR). A new Intellectual Property Code (R.A. 8293), which took effect January 1, 1998, improves the legal framework for IPR protection in the Philippines. It provides enhanced copyright and trademark protection; creates a new Intellectual Property Office (IPO) that has authority over most patent, trademark, and copyright issues; increases penalties for infringement and counterfeiting; and relaxes provisions requiring the registration of licensing agreements. Passage of the law was called for under a 1993 bilateral U.S.-Philippine agreement to strengthen protection of intellectual property rights in the Philippines and to comply with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

Deficiencies in R.A. 8293 remain a serious concern. These included a provision permitting the decompilation of software programs as "fair-use," subject to certain restrictions; the lack of clear provisions for *inaudita altera parte (ex-parte)* relief in civil cases as required by Article 50 of the WTO TRIPS; ambiguous provisions on the rights of copyright owners over broadcast, rebroadcast, cable retransmission, and satellite retransmission of their works; and burdensome restrictions affecting licensing contracts. Some provisions of R.A. 8293, while nominally in force, are currently unavailable to rights holders because of continued organizational delays at the IPO. These include the right to pursue cases against IPR violators using the IPO's administrative complaint provisions. To date, the IPO has hired no staff to handle these complaints. The Philippine Congress has yet to provide IPR protection for plant varieties and layout-designs of integrated circuits, in line with WTO obligations that became mandatory on January 1, 2000. This legislation was considered, but did not pass during the most recent session, but may be reintroduced in the Philippine Congress as early as the summer of 2001.

Despite the creation in February 1993 of the Presidential Interagency Committee on Intellectual Property Rights (PIAC-IPR) to coordinate enforcement oversight and program implementation, serious problems continue to hamper the effective operation of agencies tasked with IPR enforcement. Resource constraints, already a problem, have been exacerbated by general governmental budgetary shortfalls, but joint efforts between the private sector and the National Bureau of Investigation (NBI), Philippine Customs, and the Videogram Regulatory Board have resulted in some successful enforcement actions. Judicial unwillingness to impose meaningful penalties and sentences remains a stumbling block to more aggressive use of the courts to deter IPR violations. The designation in 1999 of 48 courts to handle IPR violations did little in the short term to streamline judicial proceedings in this area. A Department of Justice task force that was trained to handle IPR cases is no longer tasked with taking the lead on prosecuting these cases, and many inexperienced prosecutors end up on IPR cases instead. Because of the lengthy nature of court action, many cases are settled out of court. The Philippines remained on the Special 301 Watch List in 2000.

The Philippine Government is a party to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty; it is also a member of the World Intellectual Property Organization, although it has not yet signed the WIPO treaties on copyright and performance rights/phonograms. The Philippines is a Member of the World Trade Organization, and utilized the transition period available to developing countries to delay implementation.

Patents

R.A. 8293 mandates a first-to-file system, increases the term of patents from 17 to 20 years, provides for the ability to patent microorganisms and nonbiological and microbiological processes, and gives patent holders the right of exclusive importation of an invention. A compulsory license may be granted in some circumstances, including if the patented invention is not being worked in the Philippines without satisfactory reason, although importation of the patented article constitutes working or using the patent.

Trademarks

R.A. 8293 no longer requires prior use of trademarks in the Philippines as a requirement for filing a trademark application. The law also eliminates the requirement that well-known marks be in use in Philippine commerce or registered with the Government. Trademark counterfeiting remains widespread in the Philippines. There are no clear provisions for *inaudita altera parte* (*ex-parte*) relief for trademark owners in civil cases.

Copyright

R.A. 8293 expands IPR protection by clarifying protection of computer software as a literary work (although it includes a fair-use provision on decompilation of software), establishing exclusive rental rights in several categories of works and sound recordings, and providing terms of protection for sound recordings, audiovisual works, and newspapers and periodicals that are compatible with the WTO TRIPS Agreement. Implementing regulations on copyright were issued by the National Library in August 1999 and address some deficiencies in the law, but significant concerns remain. As noted above, these include the lack of clear provisions for *inaudita altera parte* (*ex-parte*) relief for copyright owners in civil cases, and ambiguities concerning exclusive rights for copyright owners over broadcast and retransmission. Ratification by the Philippines of the Berne Convention (Paris Act) in June 1997 effectively ended the longstanding government practice of authorizing local publishers to reprint foreign textbooks without permission of the foreign copyright holder. However, legislation was introduced in the Philippine House of Representatives that would permit the unrestricted reproduction of copyrighted works, including computer software, and books, by educational institutions. That legislation did not pass the most recent session. According to aggregated industry statistics, the total annual trade loss resulting from copyright piracy in the Philippines in 1999 is estimated at about $140 million. U.S. book publishers, in particular, remain concerned over the rampant piracy of scientific, technical, and medical books in the Philippines.

U.S. industry reports that software piracy remains widespread, with total annual trade losses from piracy in 1999 estimated at about $27 million for business software and about $24 million for entertainment software. The Philippine Government has stated its commitment to eliminate the use of pirated software within government agencies, pursuant to Memorandum Circular 115, which orders government agencies to use only licensed, legitimate software. Software vendors believe compliance, though improved, remains uneven.

Despite positive, intensified cooperation with the Bureau of Customs and the Videogram Regulatory Board (VRM) and actions by the NBI, U.S. distributors report continued high levels of unauthorized retail sale and distribution of audio and visual material and unauthorized transmissions of motion pictures and other programming on cable systems. Enforcement officials, working with industry, raided many illegal optical disk (OD) production facilities in 2000, confiscating millions of dollars worth of equipment and inventory. Legislation that was pending in the Philippine Congress, and that may be reintroduced in summer 2001, would reorganize the VRM to expand its scope to include both audio and visual materials. The National Telecommunications Commission has undertaken new efforts to address infringement by some cable operators.

Philippine courts have been reluctant to impose substantial penalties that would serve as a deterrent to infringement; often, penalties consist only of the seizure and confiscation of the video cassettes or optical discs used in the unauthorized cable broadcast. Delays in the issuance of warrants are a problem and arrests are infrequent. It remains to be seen whether the tougher penalties contained in R.A. 8293 will enhance enforcement. The U.S. motion picture industry estimates annual losses due to audiovisual piracy in the Philippines amounted to $18 million in 1999.

Licensing of Technology

Licensing of Technology Licensing of Technology

The Intellectual Property Office requires that all technology transfer arrangements comply with provisions outlined in R.A. 8293, including the prohibition of the use of certain clauses in such arrangements. The scope of these provisions is extremely broad and serves to obstruct the normal contracting process between unrelated parties or as part of intra-company business. Technology transfer arrangements are defined by R.A. 8293 as contracts involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts, and the transfer, assignment or licensing of all forms of intellectual property rights, including computer software except for software developed for mass market.

SERVICES BARRIERS

The Philippines is long overdue in ratifying both the Fourth Protocol to the WTO General Agreement on Trade in Services (GATS), embodying its proposed obligations under the WTO Basic Telecommunications Agreement, and the Fifth Protocol to GATS, embodying its obligations under the WTO Finance Services Agreement. Details concerning the Philippine government's proposals in these areas are discussed below.

Basic Telecommunications

The Philippine Constitution (Section 11 of Article XII) limits foreign ownership of telecommunications firms to 40 percent. During the WTO negotiations on basic telecommunications services, the Philippines made commitments on most basic telecommunications services and adopted some pro-competitive regulatory principles contained in the WTO Reference Paper; however, the Philippines never ratified or signed the agreement.. The Philippines did not provide market access or national treatment for satellite services, and made no commitment regarding resale of leased circuits/closed user groups.

Financial Services

Insurance:

Although current practice permits up to 100 percent foreign ownership in the insurance sector, the Philippines only committed to a WTO binding at a maximum of 51 percent equity participation. However, it grandfathered the status of existing insurers with more than 51 percent foreign equity. Under current regulations, minimum capitalization requirements increase with the degree of foreign equity. As a general rule, only the state-owned government insurance system may provide coverage for government-funded projects. A 1994 administrative order extended this policy to public and private Build-Operate-Transfer (BOT) projects. Private insurance firms, both domestic and foreign, regard this as an important trade barrier. Current regulations require all insurance/professional reinsurance companies operating in the Philippines to cede to the industry-owned National Reinsurance Corporation of the Philippines (NRCP) at least 10 percent of outward reinsurance placements.

Banking:

May 1994 legislation permitted 10 foreign banks to open full-service branches in the Philippines or to own up to 60 percent of a new or existing local subsidiary. Foreign branch banks are limited to six branches each. Four foreign-owned banks that had been operating in the Philippines prior to 1948 were each allowed to open up to six additional branches. The Philippines only bound foreign ownership at 51 percent in its 1997 WTO financial services offer and included a reciprocity test for authorization to establish a commercial presence. The General Banking Law of 2000 (signed in May 2000 to succeed the 1948 General Banking Act) opened a seven-year window during which foreign banks may own up to 100 percent of one locally incorporated commercial or thrift bank (up from the previous 60 percent foreign equity ceiling). However, for the first three years, such foreign investment may be made only in existing banks, reflecting the current emphasis of the Bangko Sentral ng Pilipinas' (BSP, the central bank) on banking sector consolidation. Current regulations mandate that majority Filipino-owned domestic banks should, at all times, control at least 70 percent of total banking system assets. Rural banking remains completely closed to foreigners.

Securities and Other Financial Services:

Membership in the Philippine Stock Exchange (PSE) is open to foreign-controlled stock brokerages that are incorporated under Philippine laws. Foreign equity in securities underwriting companies is limited to 60 percent. Securities underwriting companies not established under Philippine law may underwrite Philippine issues for foreign markets, but not for the domestic market. Although there are no foreign ownership restrictions governing acquisition of shares of mutual funds, current law restricts membership in a board of directors to Philippine citizens. The Philippines took an MFN exemption on foreign equity participation in securities firms, stating that Philippine regulators would approve applications for foreign equity only if Philippine companies enjoy similar rights in the foreign investor's country of origin.

Advertising

Advertising Advertising

The Philippine Constitution (Section 11 of Article XVI) limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers of advertising agencies must be Philippine citizens.

Public Utilities

Public Utilities Public Utilities

The Philippine Constitution (Section 11 of Article XII) specifically limits the operation of certain utilities (i.e., water and sewage, electricity distribution, telecommunications, public transport) to firms with at least 60 percent ownership by Philippine citizens. All executive and managing officers of such enterprises must be Philippine citizens. Foreign firms are allowed limited participation in the generation of electricity.

Practice of Professions

Practice of Professions Practice of Professions

As a general rule, the Philippine Constitution (Section 14 of Article XII) reserves the practice of licensed professions (e.g., law, medicine, nursing, accountancy, engineering, architecture, customs brokerage, etc.) to Philippine citizens. Philippine law (R.A. 8182) also requires that preference be given to Philippine citizens in the hiring of consultants and other professionals necessary for the implementation of projects funded by foreign assistance. Legislation signed in February 1998 (R.A. 8555) gives the president of the Philippines the authority to waive this and other preferences applicable to the procurement of goods and services funded with foreign assistance.

Shipping

Shipping Shipping

The Maritime Industry Authority prohibits foreign flagged vessels from engaging in the provision of domestic carriage services. The country's bareboat chartering laws stipulate that Philippine flagged vessels should be manned by a Filipino crew and disallows foreign crew/officers, except as supernumeraries.

Express Delivery Services

Express Delivery Services Express Delivery Services

Foreign air express couriers and airfreight forwarding firms must either contract with a wholly-owned Philippine business to provide delivery services or establish a domestic company with a minimum of 60 percent Philippine-owned equity.

INVESTMENT BARRIERS

The 1991 Foreign Investment Act (FIA) contains two "negative lists" that outline areas where foreign investment is restricted. The restrictions stem from a Constitutional provision, Section 10 of Article VII, which permits the Philippine Congress to reserve to Philippine citizens certain areas of investment. The scope of these lists was updated by E.O. 286, signed August 24, 2000.

"List A" covers activities in which foreign equity is excluded or limited by the Constitution or other laws. No foreign investment is permitted in, among others, mass media (including cable television), rice, small-scale mining, private security agencies, and the manufacture of firecrackers and pyrotechnic devices. In addition to land ownership (where a 40 percent foreign equity ceiling applies), foreign ownership limitations cover advertising (30 percent), recruitment (25 percent), financing (60 percent), securities underwriting firms (60 percent), public utilities (40 percent), education (40 percent), the operation of deep sea commercial fishing vessels (40 percent), public works (25 percent, except for projects covered by the government's build-operate-transfer program and those that are foreign-funded, where 100 percent foreign equity is permitted), and the exploration and development of natural resources (40 percent). The Philippine Congress in February 2000 enacted legislation to open the retail trade sector to foreign investment, subject to stringent conditions, including a high minimum capitalization requirement, a divestment requirement, and local sourcing requirements. Implementing regulations also require for each investment in retail trade: a certification by the proper official of the home state that reciprocal rights are granted to Philippine citizens and enterprises, including "the extent of participation allowed." Philippine obligations under the WTO General Agreement on Trade in Services normally would not permit it to apply such a reciprocity provision. Congress is also considering legislation to allow 40 percent foreign ownership in cable television.

"List B" limits foreign ownership (generally to 40 percent) for reasons of public health, safety, morals, or national security in, for example, industries that produce explosives, firearms, military hardware, or engage in gambling. To protect small and medium domestic enterprises, this list also restricts foreign ownership to no more than 40 percent in non- export-related firms capitalized at less than U.S.$200,000.

In addition to the restrictions noted in the "A and B lists," the Philippines generally imposes a foreign ownership ceiling of 40 percent on firms seeking incentives with the BOI under the annual investment priorities plan. While there are exceptions to the ceiling, divestment to reach the 40 percent level is required within 30 years, or longer as allowed by the BOI. As a general policy, the Philippine Department of Labor and Employment allows the employment of foreigners provided there are no qualified Philippine citizens who can fill the position. However, the employer must train Filipino understudies and report on such training periodically. The positions of elective officers (i.e., president, general manager and treasurer) are exempt from the labor market test and understudy requirements.

Trade-Related Investment Measures

The BOI imposes industry-wide local content requirements under its Motor Vehicle Development Program and requires participants to generate, via exports, a certain percentage of the foreign exchange needed for import requirements. Local content requirements in the automobile sector are based on a point system, which translates to 40 percent for passenger cars and 45 percent for commercial vehicles of less than three tons.

The program also requires an investment of $10 million in parts and components manufacturing for export and domestic markets to establish a vehicle assembly facility ($8 million for trucks/commercial vehicles). This program also authorizes the BOI to create a mandatory parts list as part of the local content requirement for manufacturers.

In the chemicals/detergents sectors, Executive Order 259 requires that soap and detergents contain at least 60 percent coconut-based surface active agents of Philippine origin, thereby requiring local sourcing by soap and detergent manufacturers.

In 1995, pursuant to the WTO Agreement on Trade Related Investment Measures (TRIMS), the Philippines notified the WTO of its maintenance of local content and foreign exchange balancing requirements to promote investment in these two sectors. Proper notification allowed the Philippines to maintain such measures for a five-year transitional period, ending January 1, 2000. In October 1999, the Philippines requested a five-year extension for the measures in the motor vehicle sector. After extensive consultations on this issue with the Philippines and with other WTO members, the United States filed a dispute settlement case with the WTO. A panel was established in November, 2000, but has not yet begun its work.

In addition to the requirements notified under the WTO TRIMS Agreement, the United States continues to monitor other measures. Regulations governing the provision of BOI-administered incentives impose a higher export performance for foreign-owned enterprises (70 percent of production should be exported) than for Philippine-owned companies (50 percent). Executive Order 776 (signed in July 1987) requires that pharmaceutical firms purchase semisynthetic antibiotics from a specific local company, unless they can demonstrate that the landed cost of imports is at least 20 percent less than that produced by the local firm. Letter of Instruction 1387 (issued in 1984), which requires mining firms to prioritize the sale of copper concentrates to the then government-controlled Philippine Associated Smelting and Refining Company (PASAR), has yet to be repealed despite PASAR's privatization in 1998.

Legislation passed by the Philippine Congress in February 2000 requires that foreign retailers, for the first 10 years after the bill's enactment, source at least 30 percent (for retail enterprises capitalized at no less than $2.5 million) and 10 percent (for retail enterprises specializing in luxury goods) of their inventory, by value, in the Philippines. In addition, there appear to be unwritten "trade balancing" requirements for firms applying for approval of ventures under the ASEAN Industrial Cooperation (AICO) scheme.

ELECTRONIC COMMERCE

On June 19, 2000, the Electronic Commerce Act (Republic Act No. 8792) took effect. The new E-commerce law provides that business transactions entered into through an automated electronic system such as the internet are functional and legal, equivalent to a written document protected under existing laws on commerce. Business to business transactions include domestic and international exchange of information, arrangements and contracts for procurement, payments, supply management, transportation, and facility operations. An internet service provider (ISP) is generally not criminally liable if the ISP does not directly commit any infringement or other unlawful activities, nor does it cause another party to commit any unlawful act. The act includes provisions to penalize (among others) hacking or cracking (unauthorized access into or interference in a communication system) and piracy (or the unauthorized reproduction, distribution, importation, use, removal, alteration, and downloading, or broadcasting of copyrighted works including legally protected sound recordings). TRADE RESTRICTIONS AFFECTING ELECTRONIC COMMERCE TRADE RESTRICTIONS AFFECTING ELECTRONIC COMMERCE

Electronic transactions are not presently subject to any tax measures. However, a reciprocity clause specifies that all benefits, privileges, and advantages established under the act will be enjoyed only by parties whose country of origin grants the same benefits and privileges or advantages to Philippine citizens.

OTHER BARRIERS

The Revised Penal Code, Anti-Graft, and Corrupt Practices Act and Code of Ethical Conduct for public officials are in place and are intended to combat suspected corruption and related anticompetitive business practices. The Office of the Ombudsman investigates cases of alleged graft and corruption involving public officials. The "Sandiganbayan" (antigraft court) prosecutes and adjudicates cases filed by the Ombudsman.

In spite of these government mechanisms directed at combating suspected corruption, widespread anecdotal evidence suggests that graft remains a serious problem at many levels in all branches of the Philippine Government. For example, a current case involves a congressman who is reportedly orchestrating the withholding of the water rights of a U.S. manufacturer as leverage to renegotiate a land lease between the congressman's relative and the U.S. manufacturer. The U.S. Embassy and the American Chamber of Commerce in Manila continue to represent U.S. business interests in cases, such as the above case, where U.S. firms seemed to be disadvantaged due to reportedly questionable contract awards or other government proceedings.

Other multilateral and nongovernment organizations have also highlighted the extent to which corruption inhibits trade and investment in the Philippines. In its 2000 survey of public perceptions of corruption in 90 countries, a nongovernment organization gave the Philippines a score of 2.8 (10 being "highly clean" and 0 "highly corrupt"), ranking the Philippines among the 25 worst countries in terms of the perceived level of corruption.